IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.**1463/2006.**
In
S.B. CIVIL WRIT PETITION NO.1779/2005.

Suwalal
Vs.
District Judge, Jaipur District, Jaipur and anr.

Date of Judgment:- August 8, 2007.

QUORUM
HON'BLE THE ACTING CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. M.M. Ranjan for the appellant.
Mr. Babu Lal Gupta for the respondents.

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BY THE COURT (Per: J.M. Panchal, Actg.CJ.):

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The instant appeal is directed against the order dated November 7, 2006 rendered by the learned Single Judge in S.B. Civil Writ Petition No.1779/2005 by which the order dated July 10, 2002 passed by the learned District Judge, Jaipur District, Jaipur in Civil Misc.Appeal

No.16/2000 striking off the defence of the appellant, is confirmed.

2) The respondent No.2 had filed suit for eviction against the appellant on the ground of default in payment of arrears of rent. The trial court by an order dated May 7, 1986 determined the rent provisionally as provided by Section 13(3) of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (the “Act” for short) and directed the appellant to deposit the arrears of rent within three months and continue to deposit the rent by 15th of every month. The respondent No.2 submitted an application under Section 13(5) of the Act stating therein that the appellant had not complied with the directions given by the court vide order dated May 7, 1986 and, therefore, his defence should be struck off. The trial court dismissed the said application by an order dated March 15, 2000. Feeling aggrieved, the respondent No.2 preferred Civil Misc.Appeal No.16/2000 before the District Court. The District Court allowed the same vide

order dated July 10, 2002. Thereupon, the appellant invoked the revisional jurisdiction of this Court by filing S.B. Civil Revision Petition No.881/2002. The learned Single Judge of this Court rejected the said revision application vide order dated September 6, 2005 holding that the revision petition was not maintainable in view of the decision in Shiv Shakti Cooperative Housing Society, Nagpur Vs. Swaraj Developers and others : (2003) 6 SCC 659. After dismissal of the revision application, the appellant invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India by filing S.B. Civil Writ Petition No.1779/2005. The learned Single Judge has dismissed the same vide order dated November 7, 2006 which has given rise to the instant appeal.

3) This Court has heard learned counsels for the parties at length and in great detail. This Court has also considered the documents, forming part of the petition.

4) The contention that the appellant had

deposited rent as directed by the trial court vide order dated May 7, 1986 and, therefore, the suit could not have continued further, has no substance. It may be mentioned that the provisional rent was determined by the court in eviction Suit No.55/1985 filed by the respondent No.2 whereas, the appellant had deposited the amount in another matter. Further, as held by the District Court, no receipts were produced by the appellant to indicate that he had complied with the order dated May 7, 1986 by which the rent was provisionally determined. Under the circumstances, further proceedings in Suit No.55/1985 instituted by the respondent No.2 as were rightly continued and the proceedings did not stand terminated as claimed by the learned counsel for the appellant.

5) The plea that the application filed by the appellant for correction of order by which the rent was provisionally determined, was wrongly rejected and, therefore, the defence could not have been struck off, is devoid of

merits. It may be mentioned that the appellant had filed an application under Section 151 of the Code before the trial court to set-aside the order dated May 7, 1986. That application was rejected by the trial court vide order dated March 15, 2000. The said order was not challenged by the appellant at all and was accepted by him. Thus, the order passed by the court below the application filed by the appellant under Section 151 of the Code had attained finality. Under the circumstances, this Court is of the opinion that the appellant was not justified in committing breach of order dated May 7, 1986 on the ground that his application filed under Section 151 of the Code was wrongly rejected by the trial court.

6) The contention that by withdrawing the amount deposited by the appellant, the respondent had waived his right conferred by Section 13(7) of the Act and, therefore, the order passed by the District Court should have been set-aside by the learned Single Judge, has

no substance at all. The question whether the respondent No.2 had waived his right under Section 13(7) of the Act is a question of fact. The filing of application under Section 13(7) of the Act itself would indicate that the right conferred under the provisions of the Act was never waived by the respondent No.2. Further, Section 13(5) of the Act is mandatory in nature and, therefore, the default committed by the appellant under Section 13(5) of the Act would not stand condoned by so-called waiver of right by the respondent No.2. In this connection, the learned counsel for the appellant had relied upon the decision in Jagannath Vs. Janiram : AIR 1981 Raj. 233. The facts mentioned in the said decision indicate that no determination under Section 13(5) of the Act was made and the landlord had withdrawn willingly the amount deposited by the tenant. Under such circumstances, the learned Single Judge of this Court held that the landlord must be deemed to have waived his right. The facts of the instant

case would indicate that there was provisional determination of rent vide order dated May 7, 1986 and, therefore, principle laid down in the decision relied upon by the learned counsel for the appellant would not apply to the facts of the instant case. On the facts and in the circumstances of the case, this Court is of the opinion that the respondent No.2 had not waived right conferred on him under Section 13(7) of the Act and, therefore, the impugned-judgment is not liable to be interfered with on the ground that the respondent No.2 had waived the right conferred on him.

7) The record and more particularly running page 55 of the compilation indicates that there were defaults made by the appellant in making payment of rent subsequent to determination of provisional rent vide order dated May 7, 1986. Under the circumstances, this Court is of the opinion that the District Judge was justified in striking off the defence of the appellant.

8) On the facts and in the circumstances of

the case, this Court is of the opinion that no ground is made out by the learned counsel for the appellant to interfere with the order passed by the learned Single Judge by which the order striking off the defence, passed by the District Court is confirmed. Therefore, the appeal which lacks merits, deserves to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), Actg. CJ.**

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